

IN THE MATTER OF	:	BEFORE THE
<b>LITTLE LIGHTHOUSE</b>	:	HOWARD COUNTY
<b>CHILDCARE</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 12-008C

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### **DECISION AND ORDER**

On May 14, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Little Lighthouse Childcare for a Day Care Child Center and Nursery School in an R-SC (Residential: Single Cluster) Zoning District, pursuant to Section 131.N.13 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. John Carney and Dana Shourbati testified in support of the Petitioner. No one appeared in opposition to the petition.

#### **A Preliminary Matter**

At the outset of the hearing, Petitioner introduced into evidence Petitioner's Exhibit 1, amended conditional use and landscape plan dated May 2012. John Carney testified that the amended plans were prepared in response to State Highway Administration (SHA) requirements for a wider right-of-way and westbound bypass. These requirements resulted in

a reconfiguration of the parking lot, the building and the outdoor play area. In response to Department of Planning and Zoning comments, perimeter fencing is proposed around the property, starting at the front building restriction line, and Type E landscaping is proposed along MD 108. A dumpster is proposed in the southeastern corner of the parking lot. Because the amended plans are not substantive, the Hearing Examiner determined they could be introduced into evidence in accordance with Hearing Examiner Rules 9.4 and 9.5.<sup>1</sup> Accordingly, the term "Amended Plans" referenced in this decision and order refers to the May 2012 plans.

#### **FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 5<sup>th</sup> Election District about 600 feet east of Cedar Lane. It is referenced as Tax Map 29, Grid 17, Parcel 348, Lot 7, and is also known as 10851 MD 108 (Clarksville Pike) (the "Property"). The Property is Lot 7 of the Beech Creek Subdivision, Section 1, Area 1 (Record Plat 6685).

2. Property Description. The 1.001-acre Property is generally rectangular except for the irregularly shaped rear lot line. It has 165 frontage feet on MD 108 and is improved with a one-story residence accessed from a MD 108 driveway near the eastern Property lot line. The Property slopes gently from north to south. The Property's front section is mostly lawn. Mature

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<sup>1</sup> Under Rule 9.4, when a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit. Rule 9.5. requires the hearing examiner to suspend the hearing for at least three weeks if the amendment is substantive, i.e., the amendment proposes a use that is likely to impact vicinal properties adversely.

trees run along the rear and side lot lines and a hedgerow runs along the west site. There is also a stand of mature vegetation in the southwestern corner.

3. Vicinal Properties. Lot 8 of the subdivision adjoins the eastern lot line and is improved with a single-family detached dwelling. The R-SC zoned Parcel 30 on the west side is the four-lot Cedar Village subdivision. Lots 1 and 2 of this subdivision have pipestems adjoining the west lot line and are currently unimproved. Lot 3 is improved with a single-family detached dwelling and Lot 4 is an open space lot.

To the Property's east are the townhouses of the Beech Creek subdivision, Section 1, Area 2. The closest structure in this subdivision would lie about 50 feet from the proposed conditional use fenced outdoor area. Across MD 108 to the north and northwest are Parcels 100 and 99. Parcel 100 is improved with a Board of Education administrative office building and Parcel 99 is improved with a county vocational technical center.

4. Roads. MD 108 has two travel lanes within a 60-foot right-of-way near the Property frontage and a posted speed limit of 45 MPH.

5. Water and Sewer Service. The Property will be served by public water and sewer.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Residential Area" land use. Transportation Map 2000-2020 of the 2000 General Plan depicts MD 108 as a Minor Arterial.

7. The Proposal. The Petitioner is proposing to demolish the existing structure and a shed in the southwest corner and erect a Child Day Care Center and Nursery School (Day Care Center) building. The one-story, 4,961-square foot L-shaped building depicted on the Amended

Plan would be sited about 135 feet from the future ROW, 49 feet from the rear lot line, 35 feet from the eastern lot line, and 36 feet from the western lot line. A 3,303-sq. ft. outdoor play area (Outdoor Area) would be located within the "L" of the building rear. The Outdoor Area would be sited 35 feet from the rear lot line and 30 feet from the eastern lot line. It would be enclosed with a four-foot tall picket fence.

A 25-foot wide driveway on the Property's eastern side would provide access to 16 parking spaces. Ten spaces, including one accessible space, would be sited perpendicular to the Day Care Center building front, with six more across the parking aisle. Parking lighting will be provided in accordance with Zoning Regulations Section 134.

Because the Petitioner is seeking lesser setbacks from the 50-foot setback from adjoining residentially zoned properties for the Day Care Center building and outdoor area (as evaluated below), it is proposing to install Type C landscape buffers along the side and rear property lines. A Type E landscape buffer is proposed along the road frontage. The Type E landscape buffer shrubs will be provided without substitution, with flowering trees substituted for the required shade trees and placed in close proximity to the parking area, according to John Carney's testimony. A six-foot privacy fence would be installed along property lines.

The Day Care Center would operate Monday-Friday, 7:00 a.m. to 6:30 p.m. with a maximum enrollment of 80 children and up to 22 employees, with only 12 employees on-site at any time.

8. Mr. Carney testified to being the project manager and having worked on multiple day care centers and nursery schools. In his opinion, the proposed use meets all general

conditional use standards, poses no atypical adverse impacts and meets all conditional use category standards.

9. Mr. Carney further testified that MD 108 can accommodate a bypass lane on the westbound side of MD 108, per SHA's comments and the SHA is reviewing the bypass for compliance. Proposed deceleration and acceleration lanes will accommodate safe access.

10. In response to questions from the Hearing Examiner about how children would walk from the parking lot to the building, Mr. Carney stated that a sidewalk could be provided on the east side of the parking next to the Day Care Center building and the accessible parking space moved to the center of these parking spaces.

11. Ms. Shourbati testified that the location is optimal because there are no nursery schools nearby. No meals will be served.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

##### **I. General Criteria for Conditional Uses (Section 131.B)**

**A. Harmony with the General Plan.** Section 131.B.1 requires me to evaluate whether the proposed modification of the approved conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

**a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**

**b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. The approximately one-acre Property would adequately support the increased intensity of the use and the location of the Property on a Minor Arterial ensures harmoniousness with the land uses and policies indicated in the General Plan for the district in which it is located. The proposed acceleration/deceleration lanes and the westbound bypass lane will facilitate traffic safety. The fencing and landscaping proposed in conjunction with the requested reduced setbacks will buffer vicinal residential uses.

**B. Adverse Impacts.** Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact from virtually every human activity. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an R-SC district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the R-SC district. *Schultz v.*

Pritts, 291 Md. 1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Day Care Center in the R-SC district.

**a. Physical Conditions.** The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed facility will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The uses will be conducted predominately indoors. The proposed outdoor area will be fenced and perimeter fencing and landscaping will mitigate the adverse effects typically associated with the use.

**b. Structures and Landscaping.** The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.b. The location and height of the proposed building will comply with the standards for reduced setbacks, as evaluated in Part II. The nearest residence lies about 50 feet from the fenced outdoor area and the residential uses will be further buffered from the use by six-foot perimeter privacy fencing and landscaping:

**c. Parking and Loading.** Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The Petitioner is proposing 16 parking spaces and 15 are required. The refuse area will be well set back from MD 108 and screened. A Type E landscape buffer proposed along MD 108 will screen the use from MD 108. Privacy fencing, landscaping and existing vegetation will screen the use from vicinal residential uses.

**d. Access.** The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The proposed driveway location will likely provide safe access with adequate sight distance in accordance with SHA comments (attached to the Technical Staff Report) regarding a traffic study and access permits.

## **II. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.N.13)**

**a. On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.**

As a condition of approval, the Petitioner shall provide a sidewalk along the east side of the parking spaces in front of the building and relocate the accessible parking space to provide safe areas for dropping off and picking attendees. Subject to this condition, the proposed use accords with Section 131.N.13.a.

**b. For child day care centers or nursery schools in industrial or commercial districts, outdoor play areas shall be fenced, screened and located to minimize exposure to noise and other emissions from roads, parking areas, and industrial activities.**



This section does not apply.

**c. The minimum lot size for child day care centers shall be 500 gross square feet of lot area per child.**

No more than 80 children will attend the Day Care Center and Nursery School use, resulting in a required lot size of 40,000 sq. ft. Because the Property is just over one acre in size, slightly more than 43,564 sq. ft., the proposed uses complies with Section 131.N. 13.c.

**d. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.**

The outdoor play area will be sited about 35 feet from the nearest rear property line, located to the building's rear and buffered by perimeter fencing and landscaping. The proposed use complies with Section 131.N. 13.d.

**e. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.**

Based on the 4,961-square footage of the building and a requirement of three parking spaces per 1,000 feet, 15 parking spaces are required and 16 are provided. A privacy fence and Type C landscape buffer will screen the use from adjacent residential properties. A Type E landscape buffer will screen the parking area from MD 108. Additionally, as a condition of approval, Petitioner has agreed to provide the Type E landscape buffer shrubs without substitution, with flowering trees substituted for the required shade trees and placed in close proximity to the parking area.

**f. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.**

The proposed one-story, 4,961-sq.foot day care building will have an "L" shape and is an appropriate size for the site and compatible in scale in character with vicinal residential properties, which range from townhouses and smaller single-family detached dwellings, in accordance with Section 131.N.13.f.

**g. For facilities in residential districts with a capacity of more than 30 children or adult clients at one time, the following standards apply:**

**(1) The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.**

The proposed use fronts on MD 108, a Minor Arterial, in accordance with Section 131.N.13.g.

**(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road right-of-ways.**

The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

**(a) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or (b) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.**

The proposed parking area meets the 30-foot use setback for the R-SC district. The Petitioner is requesting a reduction of the 50-foot Day Care Center setback from the east lot line to 35 feet, to 35.55 feet from the west lot line, and to 49.17 feet from the nearest rear plot

line. As depicted on the Amended Landscape Plan, remaining vegetation to the rear of the encroaching portion of the structure and proposed evergreen trees along the rear and sides of the structure, as well as a six-foot privacy fence and landscaping will effectively buffer neighboring residential properties, in accordance with Section 131.N.13.g.(2)(b).

The Outdoor Play Area and 4-foot tall picket fence would be set back about 30 feet from the east side lot line and 35 feet from the rear lot line. As depicted on the Amended Landscape Plan, remaining vegetation to the rear of the encroaching portion of the structure and proposed evergreen trees along the rear and sides of the structure, as well as a six-foot privacy fence, will effectively buffer neighboring residential properties, in accordance with Section 131.N.13.g.(2)(b).

**(3) At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.**

About 26.3 percent of the 1.001-acre site would be used as green space, in accordance with Section 131.N.13.g.(3).

**ORDER**

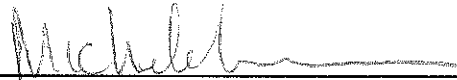
Based upon the foregoing, it is this 24<sup>th</sup> day May 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the request of Little Lighthouse Childcare for a Day Care Child Center and Nursery School in an R-SC (Residential: Single Cluster) Zoning District, is hereby **GRANTED;**

**Provided, however, that:**

1. The Petitioner shall provide a sidewalk along the east side of the parking spaces in front of the day care building and relocate the accessible parking space to the center of these spaces to provide safe areas for dropping off and picking attendees.
2. Petitioner shall provide the Type E landscape buffer shrubs without substitution, with flowering trees substituted for the required shade trees and placed in close proximity to the parking area.
3. The conditional use shall be conducted in conformance with and shall apply only to the structures and uses described in the petition and depicted on the May 2012 Amended Conditional Use and Landscape Plans, and not to any other activities, uses, or structures on the Property.
4. The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.